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10/763,353	01/23/2004	Randy Hoffman	200311332-2	7102

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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
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EXAMINER

MONDT, JOHANNES P

ART UNIT	PAPER NUMBER
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3663

NOTIFICATION DATE	DELIVERY MODE
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09/16/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action
After the Filing of an Appeal Brief

Application No.

10/763,353

Examiner

JOHANNES MONDT

Applicant(s)

HOFFMAN ET AL.

Art Unit

3663

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The reply filed 28 October 2008 is acknowledged.

1. ☒ The reply filed on or after the date of filing of an appeal brief, but prior to a final decision by the Board of Patent Appeals and Interferences, will not be entered because:

a. ☒ The amendment is not limited to canceling claims (where the cancellation does not affect the scope of any other pending claims) or rewriting dependent claims into independent form (no limitation of a dependent claim can be excluded in rewriting that claim). See 37 CFR 41.33(b) and (c).

b. ☐ The affidavit or other evidence is not timely filed before the filing of an appeal brief.
See 37 CFR 41.33(d)(2).

2. ☐ The reply is not entered because it was not filed within the two month time period set forth in 37 CFR 41.39(b), 41.50(a)(2), or 41.50(b) (whichever is appropriate). Extensions of time under 37 CFR 1.136(a) are not available.

Note: This paragraph is for a reply filed in response to one of the following: (a) an examiner's answer that includes a new ground of rejection (37 CFR 41.39(a)(2)); (b) a supplemental examiner's answer written in response to a remand by the Board of Patent Appeals and Interferences for further consideration of rejection (37 CFR 41.50(a)(2)); or (c) a Board of Patent Appeals and Interferences decision that includes a new ground of rejection (37 CFR 41.50(b)).

3. ☐ The reply is entered. An explanation of the status of the claims after entry is below or attached.

4. ☒ Other: See Continuation Sheet

September 8, 2009.

/JOHANNES MONDT/
Primary Examiner, Art Unit 3663

Continuation of 4 Other: In response to an "Order Returning Undocketed Appeal to the examiner from the BPAI" filed 9/8/09 examiner herewith:

(a) responds to the Amendment filed after the Notice of Appeal under 37 C.F.R. 41.33;

(b) vacates the examiner Answer mailed 5/15/09 and simultaneously with the instant Advisory Action issues, in a separate action, (c) a holding that the Appeal brief filed 1/27/09 is defective.

Ad (a): Examiner herewith responds to the Amendment filed 10/28/09 after the Notice of Appeal. Said Amendment is not entered for the following reasons:

First examiner notes that reasons ad 37 C.F.R. 41.33(b) (1) and 37 C.F.R. 41.33(b) (2) do not apply.

Furthermore, the claimed subject matter containing the limitation sought to be amended ("channel.... between source electrode and gate electrode") now sought to be amended was disclosed through original claim 16 (lines 6-8). On 6/7/06, in a Non-Final Office action, a ground of rejection of the claims comprising the aforementioned limitation, in which Taylor (4,521,698) was specifically cited for the aforementioned limitation (see paragraph bridging pages 9 and 10), was set forth. The corresponding rejection was responded to by applicant without amendment of said limitation and without any reference to what is only currently alleged to be a typographical error as the origin of the limitation.

Also, applicant's argument in support of an amendment after Notice of Appeal alleging that the "error would be clear to any one of ordinary skill in the art and has no bearing on the substance or the issues presented on appeal" does not persuade because, as shown through the aforementioned rejection relying on Taylor, a conductive connection between gate and drain has long been known in the art to avoid or mitigate hot electron effects, from which it is clear that said limitation is neither nonsensical nor devoid of patentable weight.

Applicant has had ample opportunity to correct the claim language according to his currently stated intentions before the Final Office action. Accordingly, examiner finds insufficient reason to enter the amendment filed 10/28/09.

Ad (b): Examiner herewith vacates the Examiner Answer mailed 5/15/09 because the Appeal Brief first needs correction in the form of an amended Claims Appendix in accordance with the claim language as rejected in the Final Office action mailed 6/2/08, which is the claim language of the amendment filed 2/26/08. Examiner did mention that the amendment was NOT entered, however examiner regrets to have misread the Claims Appendix in the Appeal filed 1/27/09, which incorrectly presumes the amendment to have been entered.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHANNES MONDT whose telephone number is (571)272-1919. The examiner can normally be reached on 8-17.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack W. Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.
/J.P.M./, September 8, 2009.